IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

cr
SPECIAL CIVIL APPLICATION No 3348 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1,2,4 and 5 Yes.
3 No.

OIL & NATURAL GAS COMMISSIION

Versus

MAHESHWARI DEVI

Appearance:
MS VASUBEN P SHAH, senior counsel with Ms. Kalpana J. Brahmbhatt for Petitioner
No one appears for the respondents

CORAM : MR.JUSTICE M.R.CALLA
Date of decision: 02/08/96

ORAL JUDGMENT

1. This Special Civil Application has been preferred by the Oil & Natural Gas Corporation ('ONGC' for short) against the Award dated 28-4-88 passed by the Central Industrial Tribunal at Ahmedabad in Reference (ITC) No.31 of 1987 whereby the respondent-workman has been deemed to be in continuous service from February, 1985 and ordered to be reinstated as such and the Management has been ordered to pay all the wages due to her.

2. The husband of the present respondent-workman was working as a contingent employee with the ONGC for a period of about 11 years and he expired on 29-10-83 while he was performing his duties. After the death of the husband of the present respondent-workman, she approached the ONGC for employment and the case of the ONGC is that out of sheer sympathy, employment was given to her by the ONGC for a specified period purely on temporary need basis in April 1984. According to the case of the ONGC, as stated in para 3 of the petition, she had worked during the period of April 1984 to January 1985 as under:

"I Month Year Days

April 1984 8
May 1984 28
June 1984 29
July 1984 18
Dec. 1984 13
Feb. 1985 22

II. GP-6
Sept. 1984 17

III. GP 81-(V)
Oct. 1984 21
Nov. 1984 27
Dec. 1984 7

IV S.G. Office
Jan. 1985 28"

The last appointment was given to her in February for 22 days in General Administration and Co-ordination Section and, thereafter she was not given any appointment. The respondent-workman raised an industrial dispute before the Central Government and on failure of the conciliation proceedings, the Central Government by its order dated 8-5-87 referred the following dispute for adjudication to the Central Industrial Tribunal, Ahmedabad :

"Whether the management of ONGC Western Region, Baroda is justified in termination of service of Smt. Maheshwari Devi, Ex-employee of ONGC? If not, what relief Smt. Maheshwari Devi is entitled to."

This dispute was registered as Reference No.31 of 1987. The case of the respondent-workman was that during the period from April 1984 to January 1985 she had worked for more than 240 days and that though her services were

terminated in February, 1985 she was not served with any notice before the termination and no compensation was paid to her and that there was violation of S.25F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). The grievance with regard to the violation of S.25G and H of the Act had also been raised. Her claim was contested by the petitioner-ONGC before the Industrial Tribunal. The Industrial Tribunal passed the Award dated 28-4-88 holding that the respondent is deemed to be continuing in service from February 1985 and she should be reinstated within two months from the date of the receipt of the Award and her due wages are to be paid within the period of two months from the date of the publication of the Award. It is this Award dated 28-4-88 which is under challenge in the present Special Civil Application.

4. The Industrial Tribunal on the basis of the evidence and the material placed before it came to the conclusion that the respondent-workman had worked for a period of 226 days only during the period from April 1984 to February 1985. Whereas the learned counsel for the respondnt-workmen Mr.M.K. Patel, who had appeared before the Industrial Tribunal, admitted the factual position before the Tribunal that she had worked for a period of less than 240 days, there was no question of considering the case with reference to breach of S.25F of the Act. The Industrial Tribunal, therefore, proceeded to examine the case on the basis that the respondent-workman had admittedly worked for a period of more than 180 days. Reference was then made to the Standing Order applicable to the petitioner. The Standing Orders providing for the classification of the workman and the termination of employment, as was considered by the Industrial Tribunal, are reproduced as under:

"2. (i) CLASSIFICATION OF WORKMEN; The Contingenet Employees of the Commission shall here after be classified as :

a) Temporary, and
b) Casual.

(ii) A workman who has been on the rolls of the Commission and has put in not less than 180 days of attendance in any period of 12 consecutive months shall be a temporary workman, provided that a temporary workman who has put in not less than 240 days of attendance in any period of 12 consecutive months and who possesses the minimum qualifications prescribed by the Commission may

be considered for conversion as regular employee.

(iii) A workman who is neither temporary nor regular shall be considered as casual workman.

14. TERMINATION OF EMPLOYMENT :

(i) For terminating the employment of workman, notice in writing shall be given in accordance with the provisions of the Industrial Disputes Act, 1947, provided that where a temporary workman is not entitled to one month's notice under the Industrial Disputes Act, he shall be given atleast 7 days' notice for termination of employment. Alternatively, wages shall be paid in lieu of notice.

(ii) The service of a workman shall not be terminated as a punishment unless he has been given an opportunity of explaining the charges of misconduct alleged against him in the manner prescribed in clause 16.

(iii) Where the employment of any workman is terminated, the wages earned by him and other dues, if any, shall be paid before the expiry of the second working day from the day on which his employment is terminated."

The Industrial Tribunal proceeded on the basis that whereas the respondent workman had completed a period of more than 180 days, she could be classified as a temporary employee and based on that classification, she was entitled to either 7 days' notice or pay in lieu of 7 days notice in terms of Standing Order No.14 (i). Whereas admittedly no notice whatsoever had been given to the respondent-workman, the Industrial Tribunal came to the conclusion that her termination was ineffective and she has to be deemed to be continuing in service. While doing so and passing the order in favour of the respondent-workman, the Industrial Tribunal also noted that in a Division Bench decision rendered by this Court in the case of K.D.G. Co.op.Bank Ltd. v. Bhargav, reported in 1984 (2) GLR 789 the condition to give one month's notice under S.66 of the Bombay Shops and Establishments Act, 1948 had also been considered as one of the grounds for holding the termination to be illegal and void and the respondent in that case was held to be entitled for reinstatement.

6. Ms. Shah appearing on behalf of the ONGC has argued that the respondent-workman in the instant case

was admittedly a temporary employee in terms of the Standing Orders and she was only a casual employee and was, therefore, not entitled to the 7 days' notice in terms of clause (i) of Standing Order 14. Her contention is that only that workman can be said to be temporary who had put in 180 days of attendance in any period of 12 consecutive months and according to her in the facts of this case, the respondent-workman had completed 180 days of attendance in a period short of 12 consecutive months because she had worked from April 1984 to January 1985 only and as such she could not have claimed classification of temporary employee and consequently there was no question of holding her to be entitled to 7 days notice in terms of clause (i) of Standing Order No.14.

7. I have considered this submission on the basis of which the impugned Award has been sought to be assailed. There is no doubt that according to the classification of the workman only such workman is taken to be temporary employee who has put in not less than 180 days of attendance in any period of 12 consecutive months, but the Standing Order has to be given a meaning on the basis of harmonious construction. Such a construction cannot be given which may offend Articles 14 and 16 of the Constitution of India. Merely because the period of 180 days of attendance is completed in a period short of 12 consecutive months, it can not be said that those who complete 180 days of attendance in a period of 12 consecutive months only shall be entitled to the status of temporary employee and the consequential benefit of 7 days' notice under clause (i) of Standing Order No.14. No class can be permitted to be created within a class. It appears rational to hold that the workman, who has completed 180 days of attendance, has to be taken to be a temporary employee. The cases in which 180 days of attendance is acquired in consecutive 12 months and the cases in which 180 days of attendance is acquired in a period short of 12 consecutive months, if treated differently, it would amount to creating a class within a class and that can not be said to be a reasonable classification. It will be unjust to interpret the Standing Orders in the manner sought to be interpreted by the learned counsel for the petitioner and it would be reading a very arbitrary, unreasonable and unjust condition to deprive the protection to employees, who have completed 180 days of attendance in a period which is lesser than 12 consecutive months as against those who took more number of months for completing 180 days of attendance. The learned counsel for the petitioner has submitted that the rationale behind the provision of 12

consecutive months is that the cases in which an employee is kept to thrive on hopes of employment for a period of 12 consecutive months should only be entitled to get the benefit of 7 days notice or pay in lieu of notice at the time of termination. This rationale, according to me, does not appeal to the reason so as to treat the employee completing 180 days of attendance in 12 consecutive months at a pedestal higher than those who complete 180 days of attendance in a period less than 12 consecutive months. The length of period for which one is kept to thrive on hopes of employment can not be measured or weighed on a sensitive golden balance with such a mathematical exactitude. Working for a period of 180 days in a period short of 12 consecutive months is more extensive than the completion of 180 days in a period of 12 consecutive months. It would be rather discriminatory to hold that the person completing 180 days of attendance in a period short of 12 consecutive months will not be entitled to the status of temporary employee and would not be entitled to the notice as provided under clause (i) of the Standing Order No.14 and such construction of the Standing Order would clearly militate against the right of equality before law enshrined in Article 14 of the Constitution of India and the right of equality in matters relating to employment as enshrined in Article 16 of the Constitution of India and may have the effect of rendering the Standing Order itself to be open to challenge under Articles 14 and 16 of the Constitution of India. In this view of the matter, the contention raised on behalf of ONGC is not found to be tenable and the same is hereby rejected.

8. There is yet another aspect from which the matter may be looked at. If the span of 12 consecutive months is taken to be the touch stone for the purpose of giving the benefit of the period of 180 days of attendance, the employer may not even allow the total period of employment to exceed over a period of 12 consecutive months and may decide to terminate the services just before the completion of 12 consecutive months so as to deny the benefit of status of temporary employee and the consequential advantage of the notice under clause (i) of Standing Order No.14 and to render the protection to be defeasible on factors which are beyond the control and comprehension of any employee and which are not at all reasonable and thus such an interpretation, besides being offensive to Articles 14 and 16 of the Constitution of India, would also precipitate unfair labour practice. While applying the Standing Orders as a part and parcel of provisions under benevolent legislation, such interpretation and meaning has to be given which may

advance the object sought to be achieved by such provisions rather than to read it mechanically so as to give uneven results and situations which are unconscionable.

9. An argument was also raised that the respondent-workman had worked for a period of 118 days in General Administration Establishment and for 108 days in Geophysical Establishment and, therefore, she can not be said to have completed 180 days of attendance. This submission need not detain me from considering the case of the respondent-workman on the footing that she had completed 180 days in all. Whether she had worked for 118 days in General Administration Department and for 108 days in Geophysical Establishment is of no consequence for the simple reason that she had been admittedly employed by the ONGC and the factum of completion of 180 days can not be made to depend upon a fortuitous circumstance of her working for some days in General Administration Department of ONGC and for some days in the Geophysical Establishment of the ONGC. Both the establishments are under ONGC and ONGC is the employer and the period of 118 days and 108 days put together make a total period of 226 days of working with ONGC. If the view is taken that the period of 118 days and 108 days cannot be allowed to be aggregated or that 180 days must be completed in a single Department/Establishment under the same employer within a period of 12 consecutive months, the employer may not allow any workman to complete 180 days in the same Department/Establishment by shifting him from one establishment to other before completion of 180 days.

10. The Industrial Tribunal held that the respondent-workman was entitled to the status of temporary employee and accordingly she was also entitled to the notice for a period of at least 7 days. On facts, there is no dispute that neither any such notice nor the wages in lieu of such notice had been given to the respondent-workman at the time of her termination. Notice in writing has to be given in accordance with the provisions of Industrial Disputes Act, 1947 and as such mode and time of the payment in lieu of notice stands prescribed in the Standing Order itself and it has to be simultaneous as a condition precedent or pre-requisite to the termination. In this view of the matter, I do not find any basis to interfere with the Central Industrial Tribunal's Award dated 24-4-88 passed in Reference (ITC) No.31 of 1987.

11. On 4-7-88 while issuing notice returnable on

19-7-88 the condition was imposed by the Court that the respondent-workman will be reinstated before returnable date and it is give out by the learned counsel for the petitioner that she had been reinstated accordingly and she is continuously working as a contingent workman throughout the pendency of this petition in terms of this court's order dated 4-7-88.

12. I do not find any merit in this Special Civil Application and the same is hereby dismissed. Rule is hereby discharged with no order as to costs.

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